

## **REMARKS**

### **Status of Claims**

The Office Action mailed November 7, 2008 has been reviewed and the comments of the Patent and Trademark Office have been considered. Claims 1-24 were pending in the application. Claims 3, 9, 15 and 21 are currently being amended. A detailed listing of all claims that are, or were, in the application, irrespective of whether the claim(s) remain under examination in the application, are presented, with an appropriate defined status identifier.

### **Indication of Allowable Subject Matter:**

Applicant appreciates the indication of allowable subject matter made in the Office Action with respect to claims 6, 12, 18 and 24.

### **Prior Art Rejections**

In the Office Action, claims 1, 2, 5, 7, 8, 11, 13, 14, 17, 19, 20 and 23 are rejected under 35 U.S.C. § 103(a) as being unpatenable over U.S. Patent Application Publication No. 2005/0271122 ("Jonsson") in view of U.S. Patent Application No. 6,721,367 ("Miya"). Claims 3, 4, 9, 10, 15, 16, 21 and 22 are rejected under 35 U.S.C. § 103(a) as being unpatenable over Jonsson in view of Miya and further in view of U.S. Patent 6,748,009 ("Reznik"). Applicants respectfully traverse these rejections for at least the following reasons.

Claims 1-3, 5, 7-9, 11, 13-15, 17, 19-21 and 23 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Jonsson in view of Morita. Independent claim 1 recites a weighing controlling section that has the ability to "monitor a change in a power level of a sample of each of two or more delay profiles to be used in same power adding processing in delay profile calculation for path search processes and to exercise a weighting control for assigning weight to a power level of a specified sample, according to a result from the monitoring; wherein a judgment as to whether said weighting control is exercised on a specified sample depends upon a number of samples of a candidate for said weighting control." (Similar language exists in independent claims 7, 13, and 19.) Specifically, if only

one sample of a candidate for weighting control exists, negative weight is assigned to a power level of the sample. If more than one sample exists, negative weight is only assigned if the difference in power levels among the samples meets or exceeds a threshold value. (page 3, lines 5-15) Thus, a weighting control is exercised on a candidate depending upon the number of samples of a candidate for the weighting control.

The outstanding Office Action correctly asserts that Jonsson does not disclose that the invention is employed in a CDMA communication system or the exercising of a weighting control where a judgment as to whether the weighting control is exercised on a specified sample depends upon a number of samples of a candidate for the weighting control. (page 3, last paragraph of the Office Action)

The Office Action cites Miya to teach these features of the invention as claimed. Specifically, the Office Action cites that column 2, lines 22-24 and column 11, lines 43-48 of Miya teach the features of claim 1 lacking in Jonsson. Applicant respectfully disagrees with this assertion made in the Office Action.

Namely, column 2, lines 22-24 of Miya merely describes that a weighting factor selection circuit switches a weighting factor according to a change in delay profiles, and column 11, lines 43-48 of Miya merely describes that the weighting factor selection circuit selects two weighting factors of path A and path B when both have equivalent levels of power and performs transmission with directivities for both. Column 11, lines 43-48 of Miya is to be read as there is one weighting factor selected for path A, and one weighting factor selected for path B, when both paths have equivalent levels of power. This disclosure of Miya has nothing at all to do with making a judgment as to whether weighting control is to be exercised on a sample **depending upon a number of samples of a candidate for weight control**, since the same number of samples, one for each of two paths, is always performed in the system of Miya.

The invention as claimed requires a judgment be made as to whether to exercise weighting control on a specific sample depending upon a number of samples of a candidate for weighting control. There is no mention in Miya of such a judgment being made, or any

determination of when to exercise weighting control in general. Rather, Miya always selects weighting factors for his two paths A and B when they have equivalent levels of power, and this is done irrespective as to the number of samples of a candidate for weighting control.

Accordingly, independent claim 1, as well as independent claims 7, 13 and 19 that recite similar features, are patentable over the combined teachings of Jonsson and Miya.

With respect to the rejection of claim 3 based in part on the teachings of Reznik, the Office Action asserts that column 12, line 54 to column 13, line 17 of Reznik teaches assigning a negative weight to a power level of a sample, whereby the Office Action asserts that the lowest ranking as performed by Reznik corresponds to a negative weight. In reply, Applicant strongly disagrees with this assertion made in the Office Action, since the ranking in descending order as performed in Reznik is done such that all of the weights assigned are "positive" weights. This is clearly different from assigning a "negative" weight as recited in claim 3, and thus Reznik fails to teach or suggest this feature of claim 3.

In the interest of expediting prosecution, claims 3, 9, 15 and 21 have been amended to explicitly recite that the negative weight is a weighting value less than 0 (zero), so that Reznik's use of positive weights ranked in descending order cannot possibly be interpreted as teaching this claim feature.

Accordingly, dependent claims 3, 9, 15 and 21 are patentable over the cited art of record for these additional reasons.

Dependent claims 4, 10, 16 and 22 have been amended in a manner similar to the amendments made to claims 3, 9, 15 and 21, whereby those claims are also patentably distinct from the Reznik and from the other cited art of record.

### **Conclusion**

In view of the foregoing amendments and remarks, Applicant believes that the application is now in condition for allowance. An indication of the same is respectfully requested. If there are any questions regarding the application, the examiner is invited to contact the undersigned attorney at the local telephone number below.

The Commissioner is hereby authorized to charge any additional fees which may be required regarding this application under 37 C.F.R. §§ 1.16-1.17, or credit any overpayment, to Deposit Account No. 19-0741. Should no proper payment be enclosed herewith, as by a check or credit card payment form being in the wrong amount, unsigned, post-dated, otherwise improper or informal or even entirely missing, the Commissioner is authorized to charge the unpaid amount to Deposit Account No. 19-0741. If any extensions of time are needed for timely acceptance of papers submitted herewith, Applicant hereby petitions for such extension under 37 C.F.R. §1.136 and authorizes payment of any such extensions fees to Deposit Account No. 19-0741.

Respectfully submitted,

Date January 26, 2009

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